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October 24, 2008

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Re: In the Matter of the Petitions of McCook Cooperative Telephone Company, Beresford Municipal Telephone Company, Kennebec Telephone Company, Santel Communications Cooperative, Inc. and West River Cooperative Telephone Company for Arbitration pursuant to the Telecommunications Act of 1996 to Resolve Issues Relating to Interconnection Agreements with Alltel Communications, Inc.
Dockets TC07-112 through TC07-116

Dear Counsel:

Enclosed you will find a copy of Staff's Reply Brief with reference to the above captioned matter. This is intended as service upon you by mail.

Very truly yours,

/S/ ROGER L. OLDENKAMP
Roger L. Oldenkamp
Consultant

Enc.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITIONS OF)	STAFF'S REPLY BRIEF
MCCOOK COOPERATIVE TELEPHONE)	
COMPANY, BERESFORD MUNICIPAL)	TC07-112
TELEPHONE COMPANY, KENNEBEC)	TC07-113
TELEPHONE COMPANY, SANTEL)	TC07-114
COMMUNICATIONS COOPERATIVE, INC.)	TC07-115
AND WEST RIVER COOPERATIVE)	TC07-116
TELEPHONE COMPANY FOR ARBITRATION)	
PURSUANT TO THE TELECOMMUNICATIONS)	
ACT OF 1996 TO RESOLVE ISSUES)	
RELATING TO INTERCONNECTION)	
AGREEMENTS WITH ALLTEL)	
COMMUNICATIONS, INC.)	

Staff has had the opportunity to review the briefs submitted by the Petitioners and by Alltel in the above-captioned matters. Upon a review of all matters submitted by the parties, the recommendations of Staff remain essentially as submitted in Staff's Brief dated October 10, 2008.

The briefs submitted by Alltel and the Petitioners accurately relate the factual history, background and issues in this arbitration hearing. The law pertaining to Title 47: Telecommunications, Part 51, Code of Federal Regulations has been appropriately noted by the parties, as were the relevant sections of Title 47 - Telegraphs, Telephones, and RadioTelegraphs, Chapter 5 - Wire or Radio Communication, Subchapter II - Common Carriers (47 U.S.C. 252), and the legal authority of the South Dakota Public Utilities Commission to hear and render a ruling in this matter pursuant to SDCL 49-31-81 and ARSD 20:10:32:29. The foregoing coupled with federal case law and FCC Orders and regulations and the testimony and admitted exhibits provide the context for Staff's recommendations.

47 CFR 51.513 - Proxies for Forward-looking Economic Cost

There are some matters here which merit further mention. As respects Issue #1 - Is the reciprocal compensation rate for IntraMTA Traffic proposed by the Petitioners appropriate pursuant to 47 U.S.C. Section 252(d)(2)? It is our opinion that the use or resort to 47 CFR Part 51, subpart F - Pricing of Elements, section 513 - Proxies for forward-looking economic cost is inadvisable. Our research has determined that rulings of the 8th Circuit Court of Appeals and the U.S. Supreme Court have put the legal validity of this section in serious question, cf Iowa Util. Bd v. FCC, 120 F.3d 753 (8th Cir. 1997) aff'd in part, rev'd in part; and Iowa Util. Bd v. FCC 219 F.3d 744 (8th Cir. 2000); and Iowa Util. Bd v. FCC, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999). Currently, Section 513 has been vacated by the 8th Circuit Court of Appeals. In the event the Commission were to conclude that the cost information available in the record was insufficient to form a basis for the adoption of a rate or rates, one alternative would be to order the completion of a new and appropriate study and order the use of proxy rates until the new study was completed pursuant to section 513. That option is not advisable at the present time and we would strongly recommend against it.

Acceptance of the Petitioners' FLEC studies would make the issue of a new study and the implementation of proxy rates a non-issue. For the reasons given previously, Staff continues to recommend that the Petitioners' cost study be accepted by the Commission.

FLEC Studies not made a part of the Record

Alltel has raised an issue in its brief relative to the formal filing of the Petitioners' cost studies with the Commission during the arbitration hearing. On review of the record, it does appear to Staff that Alltel has a valid point and technically the FLEC studies are not currently a part of the formal record in this matter. Staff defers to the Commission and Commission Counsel for the disposition of this issue. The recommendations of Staff were made with the understanding that the record was complete and Staff did not notice this omission.

TELRIC

The most significant issue in this case is the application of the facts as they appear in the record, to the legal standard(s) appropriate for the determination of a TELRIC (Total Economic Long Run Incremental Cost) based reciprocal compensation rate, specifically 47 CFR 51.505. Staff has already noted that the Petitioners' FLEC studies are dated and imperfect. The FCC discussed the use of dated and imperfect cost studies generally in Virginia Arbitration Cost Order, FCC Rcd 17735 where they noted:

...rate cases must end, or rates would never be set. Cost model input data invariably change during the pendency of a ratemaking case. This is not the rare situation where something new and unexpected has occurred; rather, it is the norm. Indeed, the Supreme Court expressly noted that TELRIC rates contain "built-in lags in price adjustments." Verizon itself, moreover, correctly stated elsewhere in this proceeding that cost model inputs necessarily are "snapshots" of the information known at the time a cost model is filed.

When placed in the context of the commencement of these arbitration proceedings and the passing of additional time, preliminary to the commencement of these proceedings, Staff is of the opinion that the FLEC studies are not tainted by virtue of being dated.

Staff remains of the opinion that the FLEC studies offered by the Petitioners do not include embedded costs, retail cost, opportunity costs, or revenues to subsidize other services. It is worth noting that 47 U.S.C. 252 (d)(1)(B) allows the State Commission to include a reasonable profit. Profits are a necessary and significant source of future investment and long run economic viability.

As respects the interpretation of the TELRIC standards in this matter, Staff agrees with Alltel's position that "total" does not mean all costs and is rather a descriptor or modifier as respects Economic Long Run Incremental Costs. A balanced and fair reading of the rules, legislation and case law clearly supports this conclusion. Absent this interpretation, the terms "total" and "incremental" would be inconsistent. Therefore, a rate consistent with the Petitioners' average total cost is inappropriate. In Staff's opinion, the heart of this matter is the distinction between the economic long run and the economic short run. Alltel's argument in favor of a more short run incremental or marginal cost usage, incorporating a high level of fixed costs is understandable. The picture painted of the Petitioners by Alltel is accurate as respects the Petitioners being high fixed cost, under capacity local exchanges in the short run. These two assumptions lead directly to the logical conclusion that the Petitioners have very low variable or incremental costs, again in the short run. Technically, the economic definition of the long run includes the state where there are no fixed

costs, only variable costs. For this reason, Staff believes that all costs are variable, except those costs specifically excluded by 47 CFR 51.505 (d) (1) through (4). Petitioners' study must transparently exclude these specific costs and Staff believes that the FLEC studies offered did transparently exclude these costs in the long run.

Public Policy

Perhaps it is both valuable and insightful to look at the overarching goal of legislation/regulation in order to put the factual matters in proper context. The public policy goal here, among others, is the enhancement of telecommunication competition through the opening of markets. In order to open markets, RLECs are required to make their infrastructure available to their competitors. Recognizing that there can be no 'market' per se for mandated relationships, it is left to the parties themselves and the states to arrive at an appropriate market price for this 'mandated' exchange. Such a price should be one that would be within the contract satisfaction zones for both the buyers and sellers and one that would reasonably 'mimic' the market price in a free market. Given that, Staff does not believe the rates Alltel proposes would ever occur in rural South Dakota in a rationally based, free market exchange. A rational RLEC, making a business decision to accept TELRIC pricing parameters in the 'free market,' would likely not accept those rates. Staff finds the rates proposed by the Petitioners to be plausibly within the contract satisfaction zone given the high cost and rural nature of the underlying market.

Minnesota's Zero Reciprocal Rate Policy

Significant emphasis has been placed on *Ace Telephone Association v. Koppendraye, et al*, 432 F.3d 876. It appears to support the proposition that a reciprocal compensation rate of zero is acceptable and appropriate. In that case, the 8th Circuit reversed the trial court and found the decision of the Minnesota Public Utilities Commission to set the reciprocal compensation rate at zero, to NOT be an arbitrary and capricious act. A review of the reason(s) the Minnesota Public Utilities Commission set the rate at zero reveals that they opted for fixed rate pricing for fixed end-office switching privileges. It was not as if they opted for no compensation at all. Reasonable people can differ as respects fixed rate versus per minute compensation. Given the parties inherent problems with billing each other, it may be a much simpler solution. Economically, it could be priced so that either fixed rate or per minute would generate the same bottom line result. Regardless, Minnesota chose the fixed rate route and determined that no 'additional' per minute compensation was appropriate. The parties here have not set fixed rates, therefore per minute reciprocal compensation must bear the full, fair TELRIC.

Beresford

Staff is sympathetic to the arguments of Alltel relative to the Beresford MTA issue. On one hand, it is merely one more inequity associated with the geographic line drawing problem generally. On the other hand, if it can be remedied, it should. Alltel suggests, again with some merit, that "The Commission should make clear that calls to Beresford subscribers from Alltel numbers rated to Beresford should not be treated as anything but local calls subject to reciprocal compensation." Staff is not sure how Alltel is proposing that it be handled, but Staff is supportive of Alltel's position in theory. The overarching MTA issue should not be decided based on this geographical line drawing anomaly.

Dated this 24th day of October, 2008.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of Staff's Reply Brief were served on the following electronically, at the e-mail addresses shown below on this the 24th day of October, 2008.

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